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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

SEP 27 1990
CAA-5- 2000-0 15

IN THE MATTER OF:) Docket No.
)
Cade Autoair, Incorporated) Proceeding to Assess a
Lansing, Michigan) Civil Penalty under
) Section 113(d) of the
Respondent.) Clean Air Act,
) 42 U.S.C. § 7413(d)
)

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Cade Autoair, Incorporated, (Cade) a Michigan Corporation doing business in the State of Michigan.

Statutory and Regulatory Background

4. Under Section 112 of the Act, the Administrator of U.S. EPA (the Administrator) promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning at 40 C.F.R. Part 63, Subpart T, on December 2, 1994.

5. The NESHAP for Halogenated Solvent Cleaning applies to solvent cleaning machines that use halogenated solvents or any combination of solvents in a total concentration greater than five percent (5%) by weight and which commenced construction on

or before November 29, 1993.

6. The NESHAP, at 40 C.F.R. Part 63, Subpart T requires that the owner or operator of such a solvent machine achieve compliance with applicable provisions of Subpart T no later than December 2, 1997. Specifically, the owner or operator of a solvent cleaning machine must give notification of compliance by May 1, 1998, provide monitoring set forth by the regulations, and keep comprehensive records as proof of compliance.

7. 40 C.F.R. Part 63, Subpart T further requires that the owner or operator of a halogenated solvent cleaning machine that also is a batch vapor machine with a solvent/air interface of greater than 13 square feet to comply with: (1) control combinations listed in Table 2 at 40 C.F.R. § 63.463(b)(2)(i), or (2) idling emission limits set forth at 40 C.F.R. § 63.463(b)(2)(ii), or (3) the alternative performance standards at 40 C.F.R. § 63.464.

8. The Administrator may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred on or after January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

9. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative

penalty action.

10. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

11. Cade owns and operates a solvent cleaning machine at its engine manufacturing plant, located at 5640 Enterprise Drive, Lansing, Michigan.

12. Cade is a person as defined at Section 302(e) of the Act, 42 U.S.C. § 1602(e).

13. Cade's solvent cleaning machine uses a halogenated solvent, trichloroethylene, in a total concentration by weight of 5% and was installed in the plant before 1986.

14. The solvent cleaning machine is also a batch vapor machine (degreaser) with a solvent/air interface of 21 square feet.

15. Cade's trichloroethylene batch vapor solvent cleaning machine is therefore subject to regulations set forth by the NESHAP for Halogenated Solvent Cleaning at 40 C.F.R. Part 63, Subpart T.

16. The State of Michigan Department of Environmental Quality conducted an inspection on June 30, 1998 at the Cade facility in Lansing, Michigan, wherein the inspector observed the solvent cleaning machine and its operation.

17. Respondent issued an initial notification of compliance

and exceedance report dated August 4, 1998, to the State of Michigan Department of Environmental Quality.

18. On September 30, 1999, U.S. EPA issued a Finding of Violation (FOV) to Cade for violations of the NESHAP.

19. On October 28, 1999, U.S. EPA and Cade held a conference call to discuss the September 30, 1999 FOV.

Count I

20. Complainant incorporates paragraphs 1 through 19 of this Complaint, as if set forth in this paragraph.

21. Respondent failed to submit an initial statement of compliance by May 1, 1998, the federally imposed deadline under the regulations. Respondent therefore failed to comply with, and thus violated, the reporting requirements set forth under 40 C.F.R. 468(d).

Count II

22. Complainant incorporates paragraphs 1 through 19 of this Complaint, as if set forth in this paragraph.

23. During the time of the State inspection on June 30, 1998 at the Cade Facility in Lansing, Michigan, the Facility failed to maintain records of its solvent cleaning machine. Respondent therefore violated the record keeping requirements set forth under 40 C.F.R. 63.467.

Count III

24. Complainant incorporates paragraphs 1 through 19 of this Complaint, as if set forth in this paragraph.

25. During the State inspection on June 30, 1998, the Respondent failed to demonstrate compliance with 40 C.F.R. §

63.463(b), whether through a control combination listed at Table 2 of 40 C.F.R. § 63.463(b)(2)(i), or through the adherence to an idling emission limit as specified under 40 C.F.R. § 63.463(b)(2)(ii), or through the adherence to the alternative standards specified under 40 C.F.R. § 63.464, and therefore Respondent violated 40 C.F.R. § 63.463(b).

Proposed Civil Penalty

26. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

27. Based upon an evaluation of the facts alleged in this Complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent in the amount of \$42,500. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's "Clean Air Act Stationary Source Penalty Policy" dated October 25, 1991 (penalty policy). Enclosed with this Complaint is a copy of the penalty policy.

28. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

29. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation,

Termination or Suspension of Permits" (the Consolidated Rules) at 64 Fed. Reg. 40138 (July 23 1999) (codified at 40 C.F.R. Part 22) govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

30. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

31. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Joseph Williams to receive any Answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Williams at (312) 886-6631. His address is:

Joseph Williams (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Penalty Payment

32. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Joseph Williams and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

33. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the Complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its Answer, as discussed in paragraphs 34 through 38 below.

Answer

34. Respondent must file a written Answer to this Complaint if Respondent: contests any material fact of the Complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. (40 C.F.R. § 22.15) To file an Answer, Respondent must mail the original written Answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 30, above, and must serve

copies of the written answer on the other parties.

35. If Respondent chooses to file a written Answer to the Complaint, it must do so within 30 calendar days after receiving the Complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and Federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or Federal legal holiday, the time period extends to the next business day.

36. Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

37. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

38. Respondent's Answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 33 above.

39. If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent

constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

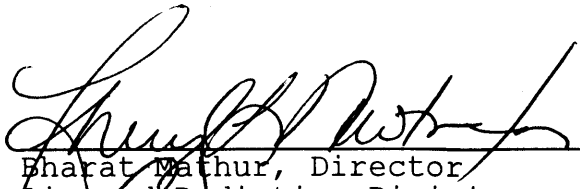
40. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Joseph Williams at the address or phone number specified in paragraph 31, above.

41. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

42. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable Federal, State, or local law.

9/26/08
Date


Bharat Mathur, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

GAA-5- 2000-010

In the Matter of Cade Autoair, Incorporated
Docket No.

CAA-5- 2000-015

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number [] to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 64 Fed. Reg. 40138 (July 23, 1999) (codified at 40 C.F.R. Part 22), and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

John Scanlon, President
Cade Autoair, Incorporated
5640 Enterprise Drive
Lansing, Michigan 48911-4193

on the 27 day of September, 2000.

Shanee Rucker
Shanee Rucker
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 709934000095920443